

Last Revision: 12/22/03

ORDINANCE NO. 04-\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10, LAND DEVELOPMENT CODE, OF THE LEON COUNTY CODE OF LAWS TO PROVIDE FOR PROTECTION OF CULTURAL RESOURCES IN THE ENVIRONMENTAL MANAGEMENT ACT (EMA); AMENDING DEFINITIONS IN SECTION 10-1; ADDING A NEW SECTION 10-194, CULTURAL RESOURCES; AMENDING SECTION 10-346, PRE-DEVELOPMENT REVIEWS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

**Section 1.** Portions of the Table of Contents of Chapter 10 of the Code of Laws of Leon County, Florida, are hereby amended as follows:

**Chapter 10**  
**LAND DEVELOPMENT CODE\***

**Article VII. Environmental Management**  
**Division 2. Stormwater Management**  
**Subdivision I. General Provisions**

Sec. 10-193. Interim lake/waterbody protection zones.

Sec. 10-194. Cultural resources.

Secs. ~~10-194~~ 10-195–10-205. Reserved

**Section 2.** Portions of Section 10-1, "Definitions", of Chapter 10 of the Code of Laws of Leon County, Florida, are hereby amended as follows:

**Sec. 10-1. Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Conservation area* shall mean an area which requires special considerations and strict application of performance standards for development due to significant environmental constraints, as identified pursuant to environmental overlay provisions in the comprehensive plan's land use element. The conservation category includes altered floodplains, altered floodways, altered watercourses, closed basins, significant grade areas (ten to 20 percent), high quality successional forests, karst features, ~~and~~ designated canopy roads, and cultural resources.

Cultural resource shall mean a site, object, structure, building, or district deemed to be of local, regional, or national significance as regards its architectural, historic, archaeological, engineering, or cultural

value. Cultural resources can include: archaeological sites; historic resources; locally designated historic resources; prehistoric or historic districts, sites, buildings, structures, and objects included in, or eligible for inclusion in, the National Register of Historic Places and those listed in the local register of historic places; sites and properties listed in the Florida Master Site File; National Historic Landmarks; human burial sites and human skeletal remains.

Section 3. Article VII, entitled "Environmental Management" of Chapter 10 of the Code of Laws of Leon County, Florida, is hereby amended by adding a new section, 10-194 "Cultural Resources", which section shall read as follows:

## ARTICLE VII. ENVIRONMENTAL MANAGEMENT

### Sec. 10-194. Cultural Resources.

It is the intent of this section to provide for the protection and preservation of significant cultural resources and to provide for mitigation of adverse impacts to such resources.

(a) Significant cultural resources. Significant cultural resources shall include: sites, buildings, districts, structures, and objects included in, or determined to be eligible for inclusion in, the National Register of Historic Places; National Historic Landmarks; archaeological or historic sites, buildings, districts, structures, and objects identified as significant archaeological or historic sites in the comprehensive plan or so designated by the Tallahassee Trust for Historic Preservation or its successor; buildings, structures, sites, objects and districts listed on the local register of historic places pursuant to sections 10-1003 and 10-1004, and; human burial sites. Significant cultural resources shall also include those cultural resources that the County Administrator or designee determines to be significant during the subdivision or site and development plan review process, environmental review process, environmental permitting process, or subsequent to initiation of site development activities. In determining the significance of cultural resources, the County Administrator or designee shall seek guidance from appropriate authorities such as the Florida Department of State's Division of Historical Resources (DHR), the State Historic Preservation Officer (SHPO), the Architectural Review Board (ARB), and the Historic Preservation Officer (HPO) designated by the Tallahassee Trust for Historic Preservation or its successor. The criteria to be applied in determining significance shall be based on those criteria used to determine eligibility for listing in the National Register of Historic Places (Code of Federal Regulations Title 36, Part 60, as amended) or those criteria set forth in section 10-1004.

(b) Disturbance of cultural resources. Development and other activities that could result in the disturbance of significant cultural resources is prohibited unless otherwise authorized by the County Administrator or designee. As regards human burials, prohibited acts shall be those identified as constituting unlawful activities in Sections 872.02 and 872.05 of the Florida Statutes. Such acts include, but are not limited to, destruction or removal of gravestones, vandalizing or injuring tombs and burial sites, and disturbing or damaging an unmarked human burial. The prohibition against disturbing human burials addressed herein shall not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under Chapter 497 Florida Statutes, or any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents or to any person otherwise authorized by law to disturb, destroy,

1 or remove an unmarked human burial. The prohibition against disturbing other types of significant cultural  
2 resources shall not apply to activities performed by educational institutions or to activities performed by or  
3 under the direction of a certified archaeologist during the normal course of investigating, documenting,  
4 preserving, or restoring such resources.

5  
6 (c) *Cultural resource protection plan.* Any application for subdivision approval, application for site  
7 and development plan approval, application for conceptual or final PUD approval, or application for an  
8 environmental management permit that involves property containing an identified significant cultural  
9 resource or that involves property that may potentially contain a significant cultural resource shall include  
10 a plan for the protection of the resource. Prior to engaging in any development activity, and prior to  
11 removing, damaging, or destroying any significant cultural resource, the person proposing to engage in such  
12 activity and the owner of the land on which such activity is proposed shall first apply for and obtain an  
13 environmental management permit that includes a plan for the protection of the resource. Proposed cultural  
14 resource protection plans shall demonstrate to the satisfaction of the County Administrator or designee that  
15 the plan will provide adequate protection of the resource. In most cases a cultural resource protection plan  
16 will involve either the preservation and protection of the resource by means of a conservation easement, a  
17 mitigation program whereby unavoidable impacts to the resource are minimized and mitigated, or further  
18 investigations during site development coupled with measures to protect significant cultural resources if  
19 discovered. These potential types of cultural resource protection plans are addressed in the following  
20 subsections:

- 21  
22 (1) *Protection by conservation easement.* A conservation easement, or other suitable means of  
23 protection in a form approved by the county attorney, shall be required for all on-site areas which  
24 contain significant cultural resources to ensure such areas will be protected and preserved, unless  
25 alternative mitigation measures are approved pursuant to section 10-194(c)(2). Conservation  
26 easements shall be dedicated in favor of the county and the easements shall encompass the cultural  
27 resources present plus a buffer if required. The determination of the required buffer, if any, shall  
28 be made by the County Administrator or designee in consultation with appropriate authorities such  
29 as the DHR, SHPO, ARB, or HPO. A conservation easement shall be required to insure the on-site  
30 protection of areas containing human burials unless: the area is a cemetery operating under Chapter  
31 497 Florida Statutes, or; a cultural resource protection plan approved by the County Administrator  
32 or designee provides for the relocation of the human remains to an active cemetery duly licensed  
33 by the state, relocation to another on-site or off-site location, or relocation to another acceptable  
34 repository. The relocation and subsequent interment of human remains at an on-site or off-site  
35 location other than a licensed cemetery shall require the establishment of a conservation easement  
36 encumbering the relocation site. Nothing contained in a conservation easement established to  
37 protect areas containing human burials shall act to prohibit any person so entitled from exercising  
38 any rights secured by Section 704.08 Florida Statutes or any rights secured by the Native American  
39 Graves Protection and Repatriation Act of 1990.

- 40  
41 a. *Ingress/egress easement required.* Any development or subdivision project that involves  
42 establishment of a conservation easement to protect areas containing human burials shall also  
43 provide an ingress/egress easement by which relatives and descendants of the deceased can  
44 legally access the conservation easement area for purposes of visiting the area at reasonable  
45 times and in a reasonable manner. The ingress/egress easement shall extend from the  
46 conservation easement area to an existing public right-of-way or existing public access

1 easement. Such an ingress/egress easement shall not be required if the conservation easement  
2 adjoins an existing public right-of-way or public access easement. An ingress/egress  
3 easement may also be required in situations involving the on-site preservation of other types  
4 of significant cultural resources or when a known significant cultural resource site is present  
5 on adjoining property. The necessity for providing such an access easement shall be  
6 determined by the County Administrator or designee based upon the significance and value  
7 of the cultural resources involved and the need for the public to have access to these resources  
8 for visitation or research purposes.

- 9  
10 b. Management and maintenance requirements. When preservation and protection of significant  
11 cultural resources is proposed through establishment of a conservation easement or similar  
12 protective mechanisms, the County Administrator or designee may also require the cultural  
13 resource protection plan to include provisions for the long-term management and maintenance  
14 of the cultural resources involved if such actions are deemed necessary to protect and preserve  
15 the integrity of these resources.

- 16  
17 (2) Protection through mitigation. If practicable project alternatives do not exist to avoid adverse  
18 effects to significant or potentially significant cultural resources, the cultural resource protection  
19 plan shall specify measures to minimize the adverse effects and to mitigate for the unavoidable  
20 effects. For purposes of this section, a "practicable" project alternative is one that does not cause  
21 an unreasonable and undue hardship on the use of the property, considering the significance and  
22 condition of the cultural resource. Mitigation measures shall be designed to preserve, reclaim, and  
23 compensate for as many of the values of the significant cultural resource as are adversely affected.  
24 Depending on the cultural resources involved, such mitigation measures can include, but are not  
25 necessarily limited to, data recovery, archaeological excavation, the recovery, analysis and  
26 documentation of features, archival studies, and other measures to assure preservation of  
27 significant elements of the resources disturbed, such as voluntary transfer to a public or nonprofit  
28 agency for curation purposes. All cultural resource protection plans involving mitigation require  
29 the preparation of a research design report and final report. These reports shall not be deemed  
30 complete until they are approved by the County Administrator or designee.

- 31  
32 (3) Protection through further investigations. In some instances, appropriate investigations may be  
33 performed to ascertain the presence of cultural resources on a proposed development site and these  
34 investigations may conclude that the presence of significant cultural resources is unlikely. Despite  
35 these results, there may be cases where the County Administrator or designee determines that there  
36 remains a reasonable probability that such resources could be present and that the proposed  
37 development could adversely impact these resources. A cultural resource protection plan shall be  
38 required in such cases. This plan shall provide for further investigation of any suspect areas during  
39 the initial stages of site development. It shall also provide a course of action to ensure adequate  
40 protection of significant cultural resources should they be discovered, as addressed in the preceding  
41 subsections.

- 42  
43 (d) Fortuitous finds and unmarked human burials. The following requirements apply to all site  
44 development activities:

- 45  
46 (1) If previously unidentified cultural resources are discovered or observed at development sites or

1 during development activities following permit issuance, then project activities affecting those  
2 resources shall cease immediately. The developer, property owner, contractor, or agent thereof  
3 shall notify the County Administrator or designee and the Division of Historic Resources within  
4 two working days of the discovery. The County Administrator or designee shall require an  
5 investigation be performed to assess the significance of the resources in accordance with  
6 subsection 10-194(a). If the County Administrator or designee determines the cultural resources  
7 are significant pursuant to subsection 10-194(a), development activities in the area containing these  
8 resources shall not be resumed until such time that a cultural resource protection plan has been  
9 submitted to and approved by the County Administrator or designee. The approved protection plan  
10 may restrict further development in the area containing the identified resources. If the County  
11 Administrator or designee determines the resources are not significant, development activities can  
12 continue upon written notification issued by the County Administrator or designee.  
13

- 14 (2) If any unmarked human burial is discovered or observed at development sites or during  
15 development activities following permit issuance, all activity that could disturb the burial site shall  
16 cease immediately. The developer, property owner, permittee, contractor, or agent thereof shall  
17 immediately notify the nearest law enforcement office and shall follow the notification procedures  
18 set forth in Section 872.05 Florida Statutes. In addition, the County Administrator or designee  
19 shall be notified within two working days of the discovery. Development activities in the area  
20 containing unmarked human burials shall not be resumed until such time that a cultural resource  
21 protection plan has been submitted to and approved by the County Administrator or designee. The  
22 approved plan may prohibit further development in the burial site area. As used in this subsection,  
23 "unmarked human burial" shall have the same meaning as defined in Section 872.05 Florida  
24 Statutes.  
25

- 26 (3) In cases where previously unidentified cultural resources are discovered or an unmarked human  
27 burial is discovered, the County Administrator or designee will seek to expedite the County's final  
28 resolution of the matter in an effort to minimize the interruption of lawful development activities  
29 affected by such discoveries. The review and processing of such cases shall not be conducted in  
30 a manner that could jeopardize the foremost goal of protecting significant cultural resources.  
31

32  
33 **Secs. ~~10-194~~10-195–10-205. Reserved.**  
34  
35

36 **Section 4.** Section 10-346, "Pre-Development Reviews", of Chapter 10 of the Code of Laws of Leon  
37 County, Florida, is hereby amended as follows:  
38

39 **Sec. 10-346. Pre-Development Reviews.**  
40

41 (a) Every application for standard form permit, for subdivision approval, for conceptual or final PUD  
42 approval, for approval of any project which includes 40 percent or more area of the proposed site located in  
43 a conservation or preservation overlay district, for every required application for site and development plan  
44 approval, for all roadway projects on new locations, and all widening of existing roadways, shall be  
45 accompanied by an environmental analysis which shall become, upon approval, a part of the final  
46 development approval. The environmental analysis shall include the following components:

1     **Sec. 10-346(a)(1)** no changes  
2

- 3     (2) *Standards for the Protection of Natural Features.* If an application contains one or more of the  
4     preservation/conservation areas listed in subsection (1) above, the applicant shall propose measures to  
5     mitigate the adverse affects of the development on such areas, using as a minimum, the standards and  
6     guidelines set forth below. Details of the proposed mitigation for on-site preservation /conservation  
7     areas must be supplied with the environmental impact analysis application.  
8

9     **Sec. 10-346(a)(2)a.** unchanged  
10

- 11     b. *Conservation areas.* Development activity is permitted within conservation areas provided  
12     that it is specified in the document establishing the conservation area and is consistent with  
13     the following criteria:  
14

- 15     1. *Degraded wetlands.* In cases where a wetland has been considered degraded in  
16     accordance with Sec. 10-187, some development activity may be permitted as outlined  
17     in section 10-187(c) and section 10-187(f).  
18
- 19     2. *Altered floodplains.* Development is allowed within altered floodplains provided that  
20     no floodway is adversely affected, compensating volume is provided for any net fill  
21     within the floodplain, and the lowest floor elevation of any structure is placed at or above  
22     the flood protection elevation.  
23
- 24     3. *Altered floodways.* Development shall not be allowed in areas designated as floodways,  
25     as defined in section 10-1. However, public sector infrastructure projects shall be  
26     allowed if it can be shown by certified technical methods, approved by the director, that  
27     the development activity will not cause an increase in the 100-year floodplain profile.  
28     For floodways not designated as FEMA floodways, it shall be demonstrated that all  
29     activities associated within the development shall not increase the 100-year floodplain  
30     elevation by more then one foot.  
31
- 32     4. *Altered watercourses.* Development is allowed within altered watercourses pursuant to  
33     meeting other Code sections if compensating volume is provided for any net fill within  
34     the watercourse, and the lowest floor elevation of any structure is placed at or above the  
35     flood protection elevation.  
36
- 37     5. *High quality successional forest.* Development activity is not allowed within areas  
38     designated as high quality successional forest. However, if the entire parcel under  
39     review is considered high quality successional forest, then the site may be developed at  
40     4,000 square feet of disturbance per two acres, up to a maximum of 20% of the entire  
41     parcel. Those areas designated to be preserved shall be placed in a conservation  
42     easement.  
43
- 44     6. *Significant grade area.* Fifty percent of the total grade area or fifty percent of each  
45     individual grade area must be left natural and shall be placed into a conservation  
46     easement. This requirement may be met by preserving 50% of each individual area or

fifty percent of the total grade areas, whichever most effectively provides downhill buffers, protects forested areas, or buffers other protected conservation or preservation areas.

7. *Closed basins.* Development activity within closed basins must meet the standard outlined in section 10-188.

8. ~~*Archaeological and historical sites.*~~ *Cultural resources.* ~~All identified archaeological and historical sites must be protected in accordance with the recommendations of the Compliance Review Division of the Bureau of Historic Preservation of the Florida Department of State.~~ Significant cultural resources shall be protected in accordance with section 10-194. A cultural resource protection plan is required for areas containing identified significant cultural resources. This plan may require a conservation easement encompassing the cultural resources, provision of public access to the cultural resource site, or other measures to protect, maintain, and manage the resource or to mitigate for impacts to the resource.

- c. *Table of Standards for the Protection of Natural Features* is included herein as Table 1. If an application includes land on which one or more of the natural features listed within the table is present, the applicant shall propose measures to mitigate the adverse effects of the development on such constraints, using as a minimum the mitigation measures set forth in the table, but in addition may include other appropriate mitigation techniques which would meet the objectives thereof.

Table I. Table of Standards for the Protection of Natural Features

Allowable Use Categories	Low-Density Residential Passive Recreation	High-Density Residential Medium-Density Residential Active Recreation	Minor Commercial Neighborhood Commercial Community Commercial Highway Commercial Regional Commercial Postsecondary Minor Office Major Office Office Park Community Services	Heavy Industrial Heavy Infrastructure Light Infrastructure Minor-Light Industrial Light Industrial Park Interchange Commercial Involves use of regulated hazardous materials**
<b>Natural Features</b>				
Waterbodies	Conservation Easement to O.H.W. line plus 50' naturally vegetated buffer			Conservation Easement to O.H.W. plus 50' x setback factor*
Watercourses /Tributaries**	Conservation Easement to O.H.W. plus 10' x setback factor	Conservation Easement to 25 year flood elev. plus 20' x setback factor	Conservation Easement to 25 year flood elev. plus 30' x setback factor	Conservation Easement to 25 year flood elev. plus 50' x setback factor
	Conservation Easement to O.H.W. line plus a 50' naturally vegetated buffer for all tributaries as defined in Section 10-1			
Wetlands	Conservation Easement to jurisdictional line plus 10' x setback factor*	Conservation Easement to jurisdictional line plus 20' x setback factor*	Conservation Easement to jurisdictional line plus 30' x setback factor*	Conservation Easement to jurisdictional line plus 50' x setback factor*
Floodplain	Drainage Easement to 100 year post-development Floodplain elevation / Conservation Easement to 100 year floodplain if additional natural features are present			
Native Forest**	Conservation Easement to boundary determined during the NFI plus a 20' buffer - Management Plan approved by local, state, and federal agencies			
High Quality Successional Forest**	Conservation Easement to boundary determined during the NFI- Management Plan approved by local, state, and federal agencies. If entire site is comprised of HQSF, then the site may be developed at 4,000 square feet of disturbance per two acres, not to exceed 20% of the parcel			
Severe Slopes	Conservation Easement for all areas			
Significant Slopes	Conservation Easement for 50% of grade area			
Closed Basins	Retention of 100 year Post-Development Volume Increase/ soil tests to verify percolation			
Site with special concern, threatened and endangered species	Protection and management plan required (approved by local, state and federal resource management agencies)			
Areas of Environmental Significance	Conservation Easement to uppermost contiguous slope break plus a 35' foot setback			Conservation easement to uppermost contiguous slope break plus a 50' setback
Archaeological or Historical Sites Cultural Resources	Recommendation of the Division of Historic Resources Protection plan is required if significant cultural resources are present as set forth in section 10-194			

\* Setback factor: Buffer width as given X slope factor X soil factor. Where slope factor= 1+average gradient in % and soil factor= clay x 2 and sand x 1 (i.e. the required buffer for an apartment complex with a 5% slope on clay soils:  $20 \times 1.05 \times 2 = 42$ )

\*\* See Section 10-1 for definitions



1  
2 **Sec. 10-346(a)(3)** no changes

3  
4 **Sec. 10-346(b)** no changes

5  
6 (Ord. No. 92-3, § 1(7-61), 1-28-92; Ord. No. 95-14, § 24, 9-12-95; Ord. No. 00-45, § 3, 11-14-00; Ord. No.  
7 01-09, § 3, 4-10-01)

8  
9  
10 **Section 5. Conflicts**

11  
12 All ordinances or parts of ordinances in conflict with the provisions of the Ordinance are hereby repealed  
13 to the extent of such conflict, as of the effective date of this Ordinance, except to the extent of any conflicts  
14 with the Tallahassee-Leon County Comprehensive Plan, as amended, which provisions shall prevail over any  
15 parts of this Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.  
16

17  
18 **Section 6. Severability**

19  
20 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid  
21 or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct  
22 and independent provision and, such holding shall not affect the validity of the remaining portions of this  
23 Ordinance.  
24

25  
26 **Section 7. Effective Date**

27  
28 This ordinance shall take effect on February 1, 2004.

29  
30 DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this  
31 \_\_\_\_ day of \_\_\_\_\_, 2004.  
32

33  
34 LEON COUNTY, FLORIDA

35  
36 BY: \_\_\_\_\_  
37 JANE G. SAULS, CHAIRMAN  
38 BOARD OF COUNTY COMMISSIONERS  
39

40  
41 ATTEST:  
42 BOB INZER, CLERK OF THE COURT  
43 LEON COUNTY, FLORIDA  
44

45 APPROVED AS TO FORM:  
46 LEON COUNTY ATTORNEY'S OFFICE

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
HERBERT W.A. THIELE, ESQ.  
COUNTY ATTORNEY